

Chronicle of the Colloquium "Sport and Business Law" at the University Toulouse 1 Capitole, France, on 11 October 2018

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Abstract

On October 11, 2018, the Association of Doctors and Ph.D. Candidates of the Business Law Center (ADDCDA) organized at the University Capitole I, Toulouse, France, a Colloquium on the theme "Sport and Business Law" presented by its then President Tamara Dupuy and conducted under the aegis of the University of Toulouse 1 Professor Arnaud de Bissy, Deputy Director of the Business Law Centre and Grégory Singer, Doctor of Law, co-head of the Master in Sport Management at the University of Toulouse 1. Researcher member of ICALP Marine Lercier, Ph.D. candidate at the Faculty of Law of the Autonomous University of Barcelona, was selected among other candidates to present her contribution on the welfare and legal protection of animals used in sport, focusing in particular on the use of horses in sports as a means of profit for companies through the example of horse racing. The opportunity to participate in this Symposium on the theme of Sports and Business Law to address the protection and legal consideration of animals in the context of human economic activities is a victory for all experts and enthusiasts of Animal Law and for the pioneering role of the Autonomous University of Barcelona in promoting and supporting studies and research in Animal Law, and for the ICALP (International Center for Animal Law and Policy) that Marine Lercier represented.

Keywords: Colloquium on Sports and Business Law; ICALP; ADDCDA; University of Toulouse 1 Capitole; Research in Animal Law; Reception of Animal Law; Sports Company; Animal Work; Animal Protection; Animals in Sport; Animal Law; Legal Status of Animals; Legal Personhood.

Resumen - Crónica del Coloquio "Deporte y Derecho Empresarial" en la Universidad Toulouse I Capitole, Francia, el 11 de octubre de 2018

El 11 de octubre de 2018, la Asociación de Doctores y Doctorandos del Centro de Derecho Empresarial (ADDCDA, por sus siglas en francés) organizó en la Universidad Capitole I, Toulouse, Francia, un Coloquio sobre el tema "Deporte y Derecho de las Empresas" presentado por su entonces Presidenta, Tamara Dupuy, bajo los auspicios del Profesor de la Universidad de Toulouse 1 Arnaud de Bissy, Director Adjunto del Centre de Droit des Affaires, y de Grégory Singer, Doctor en Derecho, co-responsable del Máster en Gestión del Deporte de la Universidad de Toulouse 1. La investigadora miembro del ICALP Marine Lercier, Doctoranda de la Facultad de Derecho de la Universidad Autónoma de Barcelona, presentó su contribución sobre el bienestar y la protección jurídica de los animales utilizados en el deporte, centrándose en particular en el uso de los caballos para el beneficio de la empresa a través del ejemplo de las carreras de caballos. La invitación a participar en esta Jornada sobre el tema del Derecho del Deporte y de las Actividades Empresariales para abordar la protección y la consideración jurídica de los animales en el contexto de las actividades económicas humanas es una victoria para todos los expertos y aficionados del Derecho Animal, así como para el papel pionero de la Universitat Autònoma de Barcelona a la hora de promocionar y apoyar los estudios y la

investigación en materia de Derecho Animal, y para el International Center for Animal Law and Policy (ICALP, por sus siglas en inglés) que ha representado Marine Lercier.

Palabras clave: Coloquio sobre Derecho del Deporte y de la Empresa; ICALP; ADDCDA; Universidad de Toulouse 1 Capitole; Investigación en Derecho Animal; Recepción del Derecho Animal; Empresa Deportiva; Trabajo Animal; Protección Animal; Animales en el Deporte; Derecho Animal; Estatuto Jurídico de los Animales; Personalidad Jurídica de los Animales.

1. Organization and Theme of the Colloquium

On October 11, 2018, the Association of Doctors and Ph.D. Candidates of the Business Law Center (ADDCDA, for its acronyms in French)¹ organized at the University Capitole I, Toulouse, France, a Colloquium on the theme "Sport and Business Law"² presented by its then President Tamara Dupuy³ and conducted under the aegis of the University of Toulouse 1 Professor Arnaud DE BISSY, Deputy Director of the Business Law Centre and Grégory SINGER, Doctor of Law, co-head of the Master in Sport Management at the University of Toulouse 1.

This was the second scientific event organized by ADDCDA. In the words of ADDCDA, the aim of this Forum was to bring together young researchers from diverse backgrounds around a universal theme, sport, and its legal understanding through the prism of the company, to ask whether the sports company is or will be subjected, in the light of the major challenges of the 21st century and its rapid transformation, to an original regime compared with other companies?

2. Participation of the ICALP

Speakers from French and international universities gathered to intervene during this session which took place in the afternoon. The legal approach to sport and the specific legal regime of sports companies were reviewed from the perspectives of Labor Law, Criminal Law, Tax Law, and... surprise..... Animal Law!

Indeed, ICALP researcher and member of the ICALP Marine Lercier, Ph.D. candidate at the Faculty of Law of the Autonomous University of Barcelona, was chosen to present her contribution on the welfare and legal protection of animals used in sport, focusing in particular on the use of horses for the benefit of the company through the example of horse racing⁴.

Her presentation approached the subject in the light of recent and progressive developments in the legal status of animals in Europe and France, both in terms of its specific impact and its potentially considerable effects on the legal framework within which the company that involves animals in competition for profit will have to operate its economic activity. The current flaws in the legal regime for "animal athletes" that require drastic changes were highlighted, albeit in a non-exhaustive manner, given the limited time available for such scientific gatherings.

The opportunity to participate in this Forum on the theme of Sports and Business Law to discuss the protection and legal consideration of animals in the context of human economic activities is a victory for all experts and enthusiasts of Animal Law and for the pioneering role of the Autonomous University of Barcelona in promoting and supporting studies and research in Animal Law, and for the ICALP (International Center for Animal Law and Policy) that Marine Lercier represented.

The Autonomous University of Barcelona hosts the first Master's degree in Animal Law in Europe⁵, offers a course in Animal Welfare Law to its final year Bachelor's students⁶ and last but not least is home to

¹ See the ADDCDA web page on the website of the University of Toulouse 1 Capitole: <http://www.ut-capitole.fr/campus/vie-associative/associations-etudiants/addcda-association-des-doctorants-et-docteurs-du-centre-de-droit-des-affaires-644653.kjsp>

See also the web page of the Centre de Droit des Affaires de l'Université Toulouse 1 Capitole: <http://cda.ut-capitole.fr/>

² See the web page of the event: <https://univ-droit.fr/actualites-de-la-recherche/manifestations/27720-le-sport-en-droit-des-affaires>
The program was modified at the last minute due to the withdrawal of some participants. The list of speakers is given below in 3) The topics covered.

³ The association is now chaired by Pierre Chaumeton.

⁴ Read the paper published in this issue: LERCIER M., Welfare protection of the animal-athlete in the sports company in light of the evolution of the legal regime for animals.

⁵ To discover the formation offered: <https://derechoanimal.info/en/master>

⁶ To read the chronicle written by a student on the course in Animal Law: <https://derechoanimal.info/en/activities/chronicles/animal-law-and-animal-welfare-course-faculty-law-uab>

the International Centre for Animal Law and Policy (ICALP), which is a place where researchers and interns from around the world can exchange ideas, while it organizes interdisciplinary working groups between its members and conducts numerous projects in the field of Animal Law research, including the publication of two book collections, one in partnership with the *Publication Services of the Autonomous University of Barcelona*, the other in partnership with the publisher *Tirant lo Blanch*⁷ and the legal journal *DA. Derecho Animal (Forum of Animal Law Studies)*⁸ and by organizing conferences such as the *Global Animal Law Conference*⁹.

This research carried out by Marine Lercier on the status and protection of animals in sport and business, and the recognition of their status as workers, is part of the broader ICALP project "*Legal status of animals: development and policies*" funded by MINECO (DER2015-69314-P) under the supervision of its Director T. Giménez-Candela¹⁰. It reflects the daily efforts of the ICALP research team to highlight the lack of coherence in the legislation on the status of animals that undermines the effectiveness of their protection, and their willingness to propose theoretical and practical solutions to address it. This work also demonstrates the Centre's interdisciplinary approach to studying human-animal relations in society.

3. The topics covered

The quality of the interventions was exceptional on the academic level, embodying in all its splendor "French excellence". Showing great professionalism and punctuality, but above all, demonstrating great oratorical skills, the speakers from the Universities of Toulouse 1 Capitole and Paris-Sorbonne brilliantly led this afternoon dedicated to Sport in Business Law.

This growing discipline calls for the development of original solutions to the many questions arising from the juridical aspects of sport, such as the status and rights of sportspersons, whether human or animal, their protection and the limits of the company's prerogatives over their person, the organization of what becomes their "work", the distribution of profits derived from the company's activity and their taxation, as well as the company's legal structure...

Among the topics discussed, Sylvie Roudil, a Doctoral Student at the University of Toulouse 1, presented first her contribution on the professional sportsperson's employment contract (entitled, in French, "*Le contrat de travail du sportif professionnel : un promptuaire abstrus et abscons*"), followed by Yann Héraud, Doctor of Law from the University of Paris-Sorbonne, who addressed the refusal of the footballer to engage with the club that trained him (entitled, in French, "*Le refus d'un sportif de s'engager avec son club formateur et le Tribunal arbitral du sport: l'exemple du football*"). These two brilliant communications highlighted the approach of athletes (and sport in general) through Social Law, illustrating the professionalization of a leisure activity that has become a real "job" whose rules must be set, still vague and in the making, mainly as a result of the practice.

These are fascinating developments, all the more so since they are still in their infancy, like Animal Law: most sports are not, for the moment, concerned; they are mainly tennis or football and some other disciplines that are practiced at the professional level, which are organized in sports companies to employ staff and generate a profit, in this way similar to the sports company that uses animals for its economic activities.

The professional tennis player and the professional footballer have also served as an example for Marina Lo Wing, a Doctoral Student at the University of Toulouse 1, to address the thorny and stormy question of the taxation of the remuneration of French athletes, outlining the contradictory claims of the tax administration and the sportsperson (entitled, in French, "*L'imposition de la rémunération du sportif français, ou les prétentions contradictoires de l'administration fiscale et du sportif*"). Treated with great precision and humor, this contribution enabled the audience to fully understand the different forms it can take, and for what reasons, in view of the various situations highlighted, and above all to understand the implications for the stakeholders and the society.

4. The positive reception given to Animal Law

Praised both by the experts of the Business Law Centre and the Professors and Researchers of the University of Toulouse 1, as well as by its students in formation and the visitors present at the event, Animal Law received a particularly warm, curious and interested welcome. Demonstrating the ever-growing interest

⁷ To consult the books published in the two collections: <https://derechoanimal.info/en/icalp/our-publications>

⁸ To consult the previous issues of the journal: <https://derechoanimal.info/en/journals/da>

⁹ The last one was held in Hong Kong on May 3 and 4, 2018: <https://derechoanimal.info/en/icalp/congresses/global-animal-law-2018>

¹⁰ To find out more about ICALP projects, past and present: <https://derechoanimal.info/en/icalp/projects>

of the society and the current and future professionals of the Law, the debate with the audience and questions of the assistance went far beyond the framework of the Company and Business Law.

The audience did not fail to express its satisfaction at seeing this discipline represented to clarify the many grey areas surrounding the teaching and development of research in Animal Law, and the advances in Animal Protection Law. The organizers therefore expressed their satisfaction at having been able to deal with this theme during a day devoted to Sports Law and Business Law, apprehending an athlete unlike any other and a sport, still today in positive law, "without a sportsperson"¹¹.

The legal status of animals and the reform of the Civil Code in 2015 in France, which recognized that all animals - the text making no mention of any categorization or hierarchization between species or uses made of animals - are sentient beings (literally, "beings endowed with sensibility"), thereby excluding them from the legal category of "thing" that was traditionally attributed to them, were the subject of great attention.

The audience could not help but notice the obvious inconsistency of the lack of protection afforded to wild animals and the persistence of the hunting practice despite the opposition of French society, in contradiction with the objective of the laws punishing mistreatment, which are applied only to domestic animals, although all are, in theory, equal in civil terms. The emotion was strong in the face of the fate reserved for certain animals and the immobility of the legislation with regard to them, leading to confusion and misunderstanding.

Many questioned the mechanisms for protecting wild animals at the international level, particularly endangered species. Indeed, Law is the only one capable of permitting or prohibiting any human conduct by limiting the prerogatives of the individual, although changes in morals may be largely responsible for the abandonment of certain practices; even more so if we consider that these prerogatives are exercised over another individual, be s/he animal.

5. The heated debate on the legal personality of animals

In the long discussion on animal rights that followed, recent attempts to grant legal personality to animals were examined, both at the international level before American justice as actions are being brought on behalf of autonomous individuals such as elephants or chimpanzees by the NonHuman Rights Project¹² under the leadership of the distinguished Steven Wise, demanding the recognition of their right to freedom by invoking a writ of Habeas Corpus on the basis of the unlawful nature of their detention; and at the French level, where reform proposals are being drawn up to this end, particularly after the Colloquium held on this subject at the University of Toulon¹³ in partnership with the Foundation 30 Millions d'Amis and the recently published book "La personnalité juridique de l'animal" ("Animals' legal personhood", in English) based on their works¹⁴.

Alongside the work in progress in France and as part of the reflection on the change in the legal status of animals, which is still unfinished, Marine Lercier defended, on 11 October 2018 at the University of Toulouse 1 Capitole, within the limits of the theme under discussion in this conference, the possibility of basing the animal's legal personality on a new foundation, at the very least as far as domestic animals are used for profit by the sports (or non-sports) company, on its status as a worker or "non-human workforce" of the company, in other words, to grant them social protection rights stemming from their individual and personal participation in the company's activity.

This requires, first of all, the acknowledgement of "animal work", a social phenomenon that is too widely ignored and left without legal effects. At a later stage, which was the subject of a rich debate, giving rise to some very relevant reflections, the question arose as to whether or not it was necessary and appropriate to attribute legal personality to animals in order to solve the problem of the insufficiency and inadequacy of their protection. Is legal personality the cure for all animal ills?

An intermediate solution has been suggested with regard to the status to which the animal would be subjected, neither a property thing that can be used, abused and disposed of within the current weak limits of the law, nor an "animal person", a concept that is still difficult to impose in the face of the emotional reactions that the term "person", when used in reference to an animal, may still arouse among certain of our

¹¹ Read the paper published in this issue: LERCIER M., Welfare protection of the animal-athlete in the sports company in light of the evolution of the legal regime for animals.

¹² To follow the activity of the NonHuman Rights Project: <https://www.nonhumanrights.org/>

¹³ Phase (I) of the Colloquium was held on 29 March 2018 at the University of Toulon: <http://www.univ-tln.fr/Colloque-La-personnalite-juridique-de-l-animal-I-L-animal-de.html>; while a second Colloquium was held at the French National Assembly on the theme "The legal personality of animals, the only way to ensure the coherence of the law: Why? How? » : <http://www.univ-tln.fr/Colloque-La-personnalite-juridique-de-l-animal.html>

¹⁴ REGAD C., RIOT C., SCHMITT S., *La personnalité juridique de l'animal* (Paris 2018)

Available on the publisher's website, LexisNexis : <http://boutique.lexisnexis.fr/8256-la-personnalite-juridique-de-l-animal/>

contemporaries. All, however, agreed that it would not mean in any event placing humans and animals on an equal footing if there were to be a consensus on the attribution of legal personality to animals, but that it would rather be about employing a technique straight out of the "legal toolbox". Clearly, choices must be made as to the method to be adopted, leading to great hesitation on the part of the doctrine and much legal uncertainty. Admittedly, there is no 'miracle' solution, and many claims are valid; however, the interests to be protected of these particularly vulnerable beings must not be lost sight of in the silence of the Law.

Conclusion

The best way to protect animals without undermining the legal order has thus found itself at the heart of the concerns of what seemed at first sight to be a meeting of strict Business Law, thereby demonstrating its flexibility and its openness to socio-cultural considerations.

More specifically, the question-and-answer session with the audience provided an excellent opportunity to emphasize the myriad of research avenues available to students, professionals, professors and researchers in Animal Law, which embraces all disciplines and is adaptable to all fields to address the countless challenges brought by animals' entry-to-the-law world, a major and irreversible step forward.

The importance of strengthening relations between research centers of different backgrounds and of promoting exchanges, both within and between universities, at the national and international levels, is more self-evident than ever: the sheer potential for research in Animal Law is tremendous, and reciprocal inputs could open the field to new and innovative solutions by forging meaningful links between Social Law, Sports Law, Business Law, Criminal Law, Civil Law, Tax Law, International Law... and Animal Law, to meet the challenges of the 21st century.

In the end, regardless of the sphere of Law at stake, research always leads us back to its fundamental tenet: that of Justice. The questions confronting those interested in the treatment of animals by humans are in every respect identical to those that deeply inspire the lawyer striving to transform society through Law, in order to establish ever more fair rules.

Colloque de l'Association des Doctorants et Docteurs du Centre de Droit des Affaires

LE SPORT ET LE DROIT DES AFFAIRES

Judi 11 octobre 2018
13H30 - 18H

Amphi Guy Isaac - MI V
 Manufacture des tabacs
 21, allée de Brienne, Toulouse

Logos: ADCCDA, CCA, LCL

Event poster